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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. G-591

Re: Authority of Comptroller, under the provisions of Senate Bill 427, Acts of the Regular Session of the 46th Legislature, to expend sum appropriated therein for "bond premiums" to pay the premium on a blanket bond covering the various employees of such department who handle the collection of money.

Answering your letter submitting the question stated in the caption hereto, we advise:

Under the appropriation provided by Senate Bill 427, Acts 46th Legislature, for the Main Division of the Comptroller's Department, there appears an item, under Maintenance and Miscellaneous, "Premiums on bonds, \$1,500."

Under the appropriation for the Gross Production, Natural Gas, Gross Receipts Tax Division of the Comptroller's Department, there appears, under Maintenance and Miscellaneous, an item for "Bond premiums ... \$250.00."

Under the Store Tax Enforcement Division appropriation for the Comptroller's Department, there appears, under Maintenance and Miscellaneous, an item which reads as follows:

"Postage, telephone, telegraph, travel expense, bond premiums, stationery, supplies and contingents ... \$15,000.00."

Under the Motor Fuel Tax Refund Division appropriation for the Comptroller's Department, there appears,

under the heading Maintenance and Miscellaneous, an item for "Bond premiums ... \$200.00."

Under the Motor Fuel Tax Division appropriation for the Comptroller's Department, there appears, under the heading Maintenance and Miscellaneous, an item for "Bond premiums ... \$300.00."

We find, under the General Laws, no express or implied authority extended by the Legislature to the Comptroller's Department to bond its various employees who handle the collection of money and pay the expense of such bond out of State funds. The Constitution is likewise silent upon the subject. The only provisions found in the statutes upon this subject appear in Article 4343, which requires a bond to be given by the Comptroller, and provides that "all expense necessary and incident to the execution of such bond shall be paid by the State by appropriation," and Articles 4352 and 4362, R. C. S., 1925, which provide for the giving of bonds by the Chief Clerk and the bond clerk, but do not provide that the expense incident to the giving of such bonds shall be paid by the State.

However, the function of an appropriation bill is to provide authority for the expenditure of certain sums of money for certain prescribed purposes. Authority to expend public moneys for certain purposes may be extended not only by general law, but also by an appropriation bill having the force and effect of law and providing sums of money to be spent for such purposes. The providing of a sum of money to be expended by a State department for a certain purpose, in an appropriation bill, is a direction by the Legislature to the department that such sum of money shall be expended for that purpose and for no other.

It is apparent from an examination of the provisions of the Departmental Appropriation Bill referred to above, in connection with the appropriation for the Comptroller's Department, that the Legislature was not providing these various sums of money to be expended for "bond premiums" solely for the purpose of defraying the premium on the official bond of the Comptroller, or for

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the purpose of defraying the premium on the official bond of the Comptroller and the premium on the official bonds of the Chief Clerk and bond clerk. It appears to be the obvious intention of the Legislature, in providing such sums of money for bond premiums, that it shall be used to defray the cost of bond premiums upon the bonds not only of the Comptroller, the Chief Clerk, and bond clerk, but also for the purpose of paying the bond premiums on various employees of the Department who handle the collection of money and therefore should be and are placed under bond. This construction has been strengthened by the information conveyed to this Department by your Mr. Farmer that it has been the practice of your Department in the past to expend similar appropriations provided in the same general terms for this purpose, which evidences a departmental construction acquiesced in by the Legislature.

Worthy of note in this connection is the fact that the Comptroller and the Chief Clerk items in the appropriation bill appear under the heading "Main Division," whereas, for each of the other separate and distinct divisions of the Comptroller's Department, there is also an item provided for bond premium, which would be wholly unnecessary and superfluous unless the Legislature intended that such sums should be expended for purposes of paying bond premiums on bonds of other officers and employees than the Comptroller, the Chief Clerk and the Bond Clerk.

You are, therefore, advised that the \$1,500.00 item for bond premiums, under the heading of Main Division of the Comptroller's Department, as it appears in Senate Bill No. 427, Acts 46th Legislature, may be used by your Department, not only for the purpose of paying the premiums on the official bonds of the Comptroller, the Chief Clerk and the Bond Clerk, but also for paying the premiums upon the official bonds of such other employees of the Main Division of the Comptroller's Department as are required by you to be under bond because of the fact that they handle the collection of public moneys.

Each of the special items provided for bond premiums for the various divisions of the Comptroller's Department is to be applied only to the payment of premiums on the official bonds of those who are bonded in the particular division under which the item of appropria-

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tion appears. In other words, the item appearing under the Main Division of the Comptroller's Department for bond premiums may not be used to pay the premiums on the official bonds of those employees in the Motor Tax Refund Division who are required to be under bond.

Trusting that this gives you the desired information, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild

R. W. Fairchild
Assistant

RWF:pb APPROVED OCT 4, 1939

R. W. Fairchild

FIRST ASSISTANT
ATTORNEY GENERAL

